G. Troy Parkinson (#9011), gtp@princeyeates.com
PRINCE, YEATES & GELDZAHLER
A Professional Corporation
15 W. South Temple, Suite 1700
Salt Lake City, Utah 84101
Telephone: (801) 524-1000
Facsimile: (801) 524-1098

Attorneys for Creditor Clark County Credit Union

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH

In re: **ROBERT ANTHONY CHIODINI** **xxx-xx-3320,** **MARILENA DIFABIO** **xxx-xx-3619,** Debtors.	Bankruptcy No. 17-20223-WWT (Chapter 7) Judge William T. Thurman

MOTION FOR RELIEF FROM THE AUTOMATIC STAY

Pursuant to 11 U.S.C. § 362(d), Bankruptcy Rules 4001 and 9014, and Local Bankruptcy Rule 4001-1, Clark County Credit Union ("Movant" or "CCCU"), a secured creditor of the above-referenced debtor, hereby moves this Court for an order annulling, terminating or modifying the automatic stay, as it relates to CCCU, so that, pursuant to applicable non-bankruptcy law, CCCU may exercise its rights and remedies as a secured creditor of the Debtor, and sell, or otherwise liquidate its interest in the property pledged to CCCU as collateral. Cause exists for the relief requested because the property has no equity and CCCU's interest in the property is not adequately protected.

In support of this motion, CCCU respectfully states as follows:

1. On or about July 19, 2016, Debtor Robert A. Chiodini ("Debtor") borrowed the original principal amount of $33,643.22 from CCCU (the "Loan") pursuant to that certain Loan Agreement and Consumer Credit Disclosure Statement (the "Loan Agreement") he executed in favor of CCCU. A copy of the Loan Agreement is attached hereto as Exhibit "A," and is incorporated herein by this reference.

2. Pursuant to the Loan Agreement, the Loan is secured by a 2013 Dodge Ram Truck 1500, VIN 1C6RR7FT3DS566601 (the "Vehicle") which is owned by Debtor.

3. CCCU properly perfected its security interest in the Vehicle by taking possession of the title to the Vehicle, whereupon CCCU is noted as lienholder. A copy of the title to the Vehicle is attached hereto as Exhibit "B."

4. Debtor has defaulted in payment of the Note and CCCU has accelerated the Loan so that all amounts owed thereunder are currently due and payable.

5. With respect to the Loan, as of February 14, 2017, there was an unpaid principal balance of $36,093.22, with accruing interest, fees and costs.

6. Debtor indicates in the Statement of Intentions an intent to surrender the Vehicle, and has voluntarily turned the Vehicle over to a CCCU repossession agent.

7. The fair market value of the Vehicle is less than the current outstanding obligation owed to CCCU. Debtor indicates that the value of the Vehicle is $19,000.00.

8. There is no equity in the Vehicle and it is not necessary for an effective reorganization.

9. Because there is no equity in the Vehicle, relief from the automatic stay is appropriate pursuant to 11 U.S.C. § 362(d)(2).

10. Further, cause exists to terminate the automatic stay, including lack of adequate protection, under 11 U.S.C. § 362(d)(1).

11. The automatic stay provided under 11 U.S.C. § 362(a) should be terminated to allow CCCU to sell or otherwise liquidate its interest in the Vehicle.

12. CCCU requests that the order to be entered granting the relief requested herein be effective upon entry, rather than being subject to a 14-day stay as provided in Fed. R. Bankr. P. 4001(a)(3), because in light of Debtors' statement of intention to surrender the Vehicle, CCCU should not be subject to any further delays occasioned by the automatic stay. CCCU contends that the Debtors' stated intention constitutes cause for the Court to waive the 14-day stay.

WHEREFORE, CCCU respectfully requests that the Court enter an Order granting CCCU relief from the automatic stay and allowing it to sell the Vehicle.

DATED this 17th day of February, 2017.

PRINCE, YEATES & GELDZAHLER

By /s/ G. Troy Parkinson
G. Troy Parkinson
Attorneys for Clark County Credit Union

CERTIFICATE OF MAILING

I hereby certify that on the 17th day of February, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent a Notice of Electronic Filing to all parties whose names appear on the electronic mail notice list for this case as follows:

- Jeremy R. McCullough jmcculloughlaw@gmail.com
- Michael F. Thomson tr thomson.michael@dorsey.com, UT17@ecfcbis.com;montoya.michelle@dorsey.com
- United States Trustee USTPRegion19.SK.ECF@usdoj.gov

I further certify that on the 17th day of February, 2017, I mailed by U.S. Postal Service, the foregoing document to the following non-CM/ECF Registered Participants:

Robert A. Chiodini
Marilena Difabio
160 West 300 North
Ivins, UT 84738

/s/ G. Troy Parkinson

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EXHIBIT "A"

DocuSign Envelope ID: 5A4BFD69-07D7-40D2-96DA-EF3F74C8F36A

CCCU
Clark County Credit Union
PO Box 36490
Las Vegas, NV 89133-6490
702-228-2228
http://www.ccculv.org

LOAN AGREEMENT AND CONSUMER CREDIT DISCLOSURE STATEMENT ("Agreement")

Borrower(s)
ROBERT A CHIODINI
160 W 300 N

IVINS, UT 84738

ANNUAL PERCENTAGE RATE The cost of Your credit as a yearly rate.	FINANCE CHARGE The dollar amount the credit will cost You.	AMOUNT FINANCED The amount of credit provided to You or on Your behalf.	TOTAL OF PAYMENTS The amount You will have paid when You have made all scheduled payments.	DATE	ACCOUNT NUMBER
5.49%	$6,006.75	$33,643.22	$39,649.97	07/19/2016	

Your payment schedule will be:

No. of Payments	Amt. of Payments	When Payments Are Due	
71	550.70	MONTHLY	09/02/2016
1	550.27	MONTHLY	08/02/2022

☐ **VARIABLE RATE.** Your loan is subject to a variable interest Rate that is subject to change on the day the Index changes ("Change Date"). Your Interest Rate will be based on an Index, which is: ☐ the dividend rate paid on the certificate account(s) pledged as Collateral on the date Your loan is established, and subsequently on each day thereafter; or ☐ the highest dividend rate that We pay on the deposit product or type pledged as Collateral on the date Your loan is established, and subsequently on each day thereafter; ("Index"). To obtain the Interest Rate, We add __________% ("Margin") to the Index. Increases or decreases in the Interest Rate will result in like increases or decreases in the Finance Charge and may affect the number of Your regularly scheduled payments. There is no limit on the Interest Rate that may be charged on Your loan, other than the maximum permitted under applicable law. For example, if Your loan amount is $10,000 for 60 months with an initial Interest Rate of 5.00% and Your Interest Rate increased to 15.00% after 12 months, You would be required to make 14.04 additional payments.

☒ **UNPERFECTED COLLATERAL RATE.** If, for any reason, the Credit Union's Security Interest in the Collateral designated in this Agreement (or in any separate document such as a Security Agreement, Assignment, Pledge or similar document) is not perfected (with the Credit Union named as first or senior lienholder) within ninety (90) days of the above date, then the Simple Interest Rate applicable to Your entire balance existing at that time and in the future will be immediately increased to 18%. Such increase in the Interest rate will result in an increase in the number of Your regularly scheduled payments. For example, if You have a loan for $10,000 for 60 months with an interest rate of 5.75% and Your interest rate increased to 18.00% after ninety (90) days, You would be required to make 35.23 additional payments. Subsequent to any such increase if You perfect Our security interest in such Collateral, the Interest Rate will be decreased to that which would have been in effect had no increase ever taken place.

Property Insurance: You may obtain property insurance from anyone You want that is acceptable to the Credit Union.

☐ **Required Deposit:** The Annual Percentage Rate does not reflect Your required deposit.
Assumability: Your loan is not assumable.
Security: You are giving a security interest in:

☐ The goods or property being purchased.
☐ Personal property (other than household goods or any dwelling) securing other loans with Us.
☒ Your present and future shares or deposits in the Credit Union.
☐ Other ______________________________

Prepayment: If You pay off early, You will not have to pay a penalty.

Late Charge: If Your payment is more than 10 days past due, You will be charged 5.00% of the regularly scheduled payment due.

Filing Fee $ __________ **Non-Filing Insurance $** __________

See Your contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

☒ This is a fixed-rate loan with a simple Interest Rate of 5.49 % ☐ This is a variable-rate loan with a present Variable Rate of ________%

Itemization of Amount Financed of $33,643.22		Amount Paid to Others on Your Behalf:	
Amount Given to You Directly	$0.00	AFCU	$33,264.22
Amount Paid on Your Account	$0.00	TITLE FEE	$34.00
		GAP FEE	$345.00
			$

Security Interest. To secure all obligations of Borrower(s) hereunder to the Credit Union, You give a security interest and lien in and upon the following property, including any and all accessions, related insurance proceeds or insurance premium refunds.

Year	Make	Model	V.I.N./Serial No.	Color
2013	RAM TRUCK	1500	1C6RR7FT3DS566601	

Other

Your interest in the Credit Union consisting of all shares, dividends, and/or amounts You have on deposit with Us at this time and all shares and/or amounts that You deposit in the future, including all dividends accrued thereon (whether or not such amounts are contained in joint or individual accounts). If You fail to make a payment when due, You authorize Us to deduct the amount owing from such shares, dividends, and/or amounts You have on deposit with Us and credit same to the amount owed under this Agreement.

Borrower's Initials DS [signature] __________ __________ __________

Borrower's Initials DS [signature] __________ __________

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ADDITIONAL PROVISIONS OF AGREEMENT

1. **PROMISE TO PAY.** You promise to pay the amount borrowed, plus interest, other permitted charges and fees to the order of Clark County Credit Union ("Lender") or assignee, according to the terms of this Agreement (including those set forth in the Federal Truth-in-Lending Disclosure). Numbers, phrases or words preceded by a☐are applicable only if the☐ is marked, e.g.☒. In this Agreement, the use of the words "Credit Union", "We," "Us," and "Our" mean Clark County Credit Union. The Borrower(s) of the Agreement, individually and collectively, are sometimes referred to as "You" or "Your." (e) means estimate, (n/a) means not applicable

2. **LIABILITY OF PARTIES.** Each person who signs this Agreement as a Borrower and whose name appears in this Agreement as Borrower agrees to be individually and jointly obligated to pay Your loan in accordance with the terms and conditions of this Agreement. Any person who signs this Agreement and checks the box preceding "Owner of Collateral (other than Borrower)" does so voluntarily and solely to give a security interest in the Collateral shown in the Security Interest section in this Agreement, but is not personally liable for any indebtedness created by this Agreement.

3. **INTEREST.** Interest will be charged on the unpaid balance of Your loan at the Simple Interest Rate (or at a rate disclosed in the Unperfected Collateral Rate and/or Variable Rate provisions) designated in this Agreement until Your balance is paid in full. Any payment may be made early without penalty, and any early payments will have the result of reducing the total amount of interest paid. Any payment made after the due date will have the result of increasing the total amount of interest paid.

4. **PAYMENTS.** Your payments are to be made in lawful money of the United States according to the Payment Schedule (adjustable to correlate to an interest rate change as disclosed in the Unperfected Collateral Rate and/or Variable Rate provisions) in this Agreement. Any partial prepayment of Your loan will not delay Your next scheduled payment. If, when You pay Your last scheduled payment, the amount You pay exceeds Your loan balance, then You give the Credit Union permission to deposit the excess to Your share account.

5. **COLLATERAL.** The Credit Union has been granted a security interest or lien in or upon the Collateral designated in this Agreement or in a separate document such as a Security Agreement, Assignment, Pledge or similar document (the subject matter of such a security interest or lien is referred to as "Collateral" in this Agreement). Except for the Credit Union's security interest or lien, the Collateral is owned free and clear from any adverse claim, security interest or encumbrance other than as now disclosed to the Credit Union. Without the express written consent of the Credit Union, no other liens, security interests or encumbrances will be allowed to attach to the Collateral. You agree to inform the Credit Union immediately if the Collateral is to be moved from Your address shown in this Agreement or at such other address at which You have informed the Credit Union the Collateral is now located. The Collateral shall not be sold or ownership otherwise transferred and at all times the Collateral shall be kept in good repair. The Collateral shall not be used for any unlawful purpose. The Credit Union shall receive the full cooperation of the Borrower or Owner in obtaining everything that We require to place and/or maintain Our security interest in and/or lien on the Collateral. The Credit Union may examine and inspect the Collateral at any time wherever located. All taxes or assessments on the Collateral shall be paid as they come due, and if not paid, the Credit Union may pay them and shall be entitled to reimbursement or, alternatively, to add any amount so paid to the unpaid balance of Your loan subject to the applicable interest rate.

   Collateral (other than household goods or any dwelling) given as security under this Agreement or for any other loan You may have with Us will secure all amounts You owe Us now and in the future if that status is reflected in the "Security" section under the "Truth-in-Lending Disclosure" in any particular Loan Agreement evidencing such debt.

6. **LIEN ON SHARES.** If shares or deposits are pledged as Collateral for this loan, You understand that the balance in Your account(s) on deposit with the Credit Union must be kept at least equal to the balance of Your loan until Your loan is repaid in full. We may, however, permit You to maintain or reduce Your account balances below Your loan balance. If You are in default, the Credit Union may apply all shares (except Keogh accounts and IRA accounts) then on deposit to Your loan up to an amount sufficient to repay Your loan.

7. **PROPERTY INSURANCE.** You promise to maintain property insurance in an amount necessary to protect Our security interest in the Collateral, with Us named as loss payee for Our protection. Such insurance shall protect against loss by fire, theft, and collision and will provide "all risks" hull insurance in the case of aircraft or boats and accessories thereto, if any. You may provide the required property insurance through an existing policy or by a policy You independently obtain and pay for from a person of Your own choosing, providing such person is reasonably acceptable to Us. You agree to deliver satisfactory evidence of the insurance policy to Us within any time period specified in any notice from Us or on Our behalf. If You do not get or keep this insurance, We may, at Our sole option, obtain insurance to protect Our interest and add its costs to Your loan and You agree to pay for it (by such means as increasing Your payment or increasing Your loan term). We are under no obligation to obtain insurance on Your behalf. If We do obtain insurance, the cost of obtaining that insurance may be added to Your loan balance, subject to the applicable interest rate. We have the authority to obtain, adjust, settle or cancel insurance and may endorse any party's name on any draft.

8. **DEFAULT.** Your loan shall be in default if any of the following things occur: (a) You do not make any payment or perform any obligation under this Agreement or any other agreement that You may have with the Credit Union; or (b) You have made a false or misleading statement in Your credit application and/or in Your representations to the Credit Union while You owe money on this loan; or (c) You should die, or be involved in any insolvency (inclusive of any bankruptcy proceeding), receivership or custodial proceeding brought by or against You; or (d) a judgment or tax lien should be filed against You or any attachment or garnishment should be issued against any of Your property or rights, specifically including anyone starting an action or proceeding to seize any of Your funds on deposit with the Credit Union; and/or (e) the Credit Union should, in good faith, believe Your ability to repay Your indebtedness hereunder is or soon will be impaired, time being of the very essence.

   Upon any occurrence of default, and to the extent permitted by law, We may declare the entire balance of Your loan immediately due and payable, without prior notice or demand. If the entire balance is not then paid immediately upon default, and if permitted by law, the Collateral shall be voluntarily surrendered to the Credit Union at a time and place acceptable to it. If this is not done, to the extent permitted by law, the Credit Union may enter the premises where the Collateral is located and take possession of it and the Credit Union may assert the defense of a superior right of possession as the holder of a security interest to any offense of alleged wrongful taking and conversion. The Credit Union may sell or dispose of the Collateral in any manner permitted by law, and any resulting deficiency on Your loan shall be immediately paid to the Credit Union. In the event collection efforts are required to obtain payment on this account, the undersigned agrees to pay all court costs, private process server fees, investigation fees or other costs incurred in collection and reasonable attorneys' fees incurred in the course of collecting any amounts owed under this Agreement or in the recovery of any Collateral. As permitted by law, the Credit Union shall have the right to impress and enforce a statutory lien upon the shares and dividends of any member indebted to it and We may enforce Our right to do so without further notice to You. Additionally, You agree that We may set-off any mutual indebtedness.

9. **ASSUMABILITY.** Your loan is not assumable.

10. **DELAY IN ENFORCEMENT.** We do not lose Our rights under this or any related agreement if We delay enforcing them. We can accept late payments, partial payments, or any other payments, even if they are marked "paid in full" without losing any of Our rights under this Agreement. If any provision of this or any related agreement is determined to be unenforceable or invalid, all other provisions remain in full force and effect.

11. **GOVERNING LAW.** You understand and agree that this Agreement will be governed by the laws of the State of Nevada, except to the extent that federal law controls.

12. **INDEX.** If this is a variable rate loan, the Index referred to in this Agreement is an Index used to calculate Your actual Interest Rate. If this Index ceases to exist, We may adopt a new Index which will then be used to figure Your actual Interest Rate.

DS

Borrower's Initials ________ ________

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Further paragraphs of this Agreement are set forth on page 1 and 2, and You agree to be bound by all of the provisions of this Agreement.

Signatures: You have signed this Agreement on 07/19/2016 and acknowledge that You have read it, that You understand it, and that You have received a completely filled-in copy of it.

DocuSigned by:
X
Signature of Borrower

X
Signature of Borrower ☐ Owner of Collateral (other than Borrower)

X
Signature of Borrower ☐ Owner of Collateral (other than Borrower)

X
Witness

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EXHIBIT "B"

Title

UTAH CERTIFICATE OF TITLE

Corrected Title

Title Number: UT002798950

Vehicle Type: TRUCK
VIN/HIN: 1C6RR7FT3DS666601
Cylinders: 8

Year: 2013 Make: RAM Model: 1500
2nd VIN:
Fuel: GASOLINE
Odometer: 25,000

Body Style: PICKUP
3rd VIN:
Date Issued: 12/13/2016

CLARK COUNTY FEDERAL CREDIT UNION
PO BOX 36490
LAS VEGAS NV 89133-6490

Owner Information: ROBERT CHIODINI
160 W 300 N
IVINS UT 84738-6133

Lienholder Information: CLARK COUNTY FEDERAL CREDIT UNION
PO BOX 36490
LAS VEGAS NV 89133-6490

ODOMETER READING REFLECTS THE ACTUAL MILEAGE

Request For Lien Change

Complete this section. Send the title and required fee to the Division of Motor Vehicles. Please check one box.

☐ Issue a title free of liens ☐ Issue a title showing the following as the NEW LIEN HOLDER

LIEN RELEASE - Signature of lien holder (releasing interest) X	Vehicle owner's signature requesting lien change
Title of signer	New lien holder's name
Date	Address
	City State ZIP Code

Division of Motor Vehicles
UTAH STATE TAX COMMISSION
210 North 1950 West
Salt Lake City, Utah 84134

TC-127 Rev. 01/13 CDR

C 0155963

VOID WITHOUT EAGLE WATERMARK HOLD TO LIGHT TO VIEW

ANY ALTERATION OR ERASURE VOIDS THIS TITLE

Title

VOID VOID

C 0155963

INSTRUCTIONS TO SELLER:
Type or print the information.
NOTARY PUBLIC IS NO LONGER NEEDED. KEEP A COPY.

INSTRUCTIONS TO BUYER:
Type or print the information. Warning: DO NOT SIGN IF ODOMETER DISCLOSURE IS NOT COMPLETE.

A Assignment Of Title By Registered Owner

SELLER

Odometer Disclosure - Required
Enter odometer miles (no tenths)

☐ Reflects ACTUAL mileage
☐ Reflects the mileage IN EXCESS of the odometer mechanical limits
☐ Is not the actual mileage for this vehicle WARNING - ODOMETER DISCREPANCY

Sales/Purchase Price - Required
Date of Sale
Sale Price
$

Print name of seller
Print name of authorized agent selling vehicle (if different from seller name)
Current address of seller (street, city, state and ZIP code)

As owner, I hereby transfer all rights, title and interest to this vehicle to the new owner named below. I certify, to the best of my knowledge, that the title is free and clear of encumbrances, except the lien to the new lien holder, if any. I certify that the odometer and sales information provided is correct. *Federal and state law require that the owner provide the mileage upon transfer of ownership of a vehicle. Failure to complete a statement or by providing false statements, may result in fines and/or imprisonment.* KEEP A PHOTOCOPY OF BOTH SIDES OF THIS SIGNED TITLE."

Signature of seller (and joint seller)
X
Date of Sale

BUYER

Print name of new owner
Print name of new lien holder
Street Address
Street Address
City State ZIP Code
City State ZIP code
Signature of buyer (new owner)
X
Signature of lien holder (releasing interest)
X

B Reassignment Of Title

SELLER

Odometer Disclosure - Required
Enter odometer miles (no tenths)

☐ Reflects ACTUAL mileage
☐ Reflects the mileage IN EXCESS of the odometer mechanical limits
☐ Is not the actual mileage for this vehicle WARNING - ODOMETER DISCREPANCY

Sales/Purchase Price - Required
Date of Sale
Sale Price
$

Print name of seller
Print name of authorized agent selling vehicle (if different from seller name)
Current address of seller (street, city, state and ZIP code)

As owner, I hereby transfer all rights, title and interest to this vehicle to the new owner named below. I certify, to the best of my knowledge, that the title is free and clear of encumbrances, except the lien to the new lien holder, if any. I certify that the odometer and sales information provided is correct. *Federal and state law require that the owner provide the mileage upon transfer of ownership of a vehicle. Failure to complete a statement or by providing false statements, may result in fines and/or imprisonment.* KEEP A PHOTOCOPY OF BOTH SIDES OF THIS SIGNED TITLE.

Signature of seller (and joint seller)
X
Date of Sale

BUYER

Print name of new owner
Print name of new lien holder
Street Address
Street Address
City State ZIP code
City State ZIP code
Signature of buyer (new owner)
X.
Signature of lien holder (releasing interest)
X

Utah Code 41-1a-701 requires the owner to remove the license plates when vehicle is sold or disposed.

VOID VOID